JD-62-09
Lansing, MI

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

LANSING AUTOMAKERS
FEDERAL CREDIT UNION

and Case No. 7-CA-52115

LOCAL 459, OFFICE PROFESSIONAL
EMPLOYEES INTERNATIONAL UNION,
AFL-CIO

Patricia Fedewa, Esq., for the General Counsel.
James C. Baker, Esq., for the Respondent.

DECISION

Statement of the Case

GEORGE ALEMÁN, Administrative Law Judge. This case was tried in Lansing, Michigan on September 8, 2009,[1] following issuance of a complaint on July 17, by the Regional Director for Region 7 of the National Labor Relations Board (the Board) against Lansing Automakers Federal Credit Union (herein the Respondent or LAFCU), alleging it had violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act).[2] Specifically, the complaint alleges that the Respondent has unlawfully failed and refused to provide the Union with certain investigative reports regarding a "gifting circle" involved in by certain employees represented by the Union.[3] In its answer to the complaint, the Respondent denies engaging in any unlawful conduct.

At the hearing, all parties were afforded a full and fair opportunity to be heard, to present oral and written evidence, to examine and cross-examine witnesses, and to argue orally on the record. On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by counsel for the General Counsel and the Respondent, I make the following

Findings of Fact

I. Jurisdiction

The Respondent is a financial service institution with its principal office in Lansing,

[1] All dates are in 2009, unless otherwise indicated.

[2] The unfair labor practice charge underlying the complaint was filed by Local 459, Office Professional Employees International Union, AFL-CIO (herein the Union).

[3] It is alleged in the complaint, and admitted by the Respondent, that the Union has represented all of the Respondent's full-time and regular part-time office clerical employees since about 1966. The parties are currently bound to a collective bargaining agreement which remains in effect until December 12, 2009.

Michigan, and branches in Mason, Dewitt, Charlotte, and Eaton Rapids, Michigan, from which it provides financial services to its members. During the calendar year 2008, a representative period, the Respondent, in the conduct of its operation, had gross revenues in excess of $500,000 and, during the same period, purchased and received goods and materials valued in excess of $50,000 at its Lansing facility from other enterprises who received said goods directly from points outside the State of Michigan. The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

Factual background

The record reflects that Robin Frucci serves as Respondent's Chief Executive Officer (CEO), Sharon Gillison as Senior Vice President for Human Resources, and Ron Pioch as Respondent's Auditor. All three are admitted supervisors and/or agents of the Respondent within the meaning of Section 2(11) and 2(13) of the Act. Sometime in early December 2008, according to Gillison, she received an anonymous letter from a LAFCU member advising that one of Respondent's employees was involved in a "cash gifting" scheme. As the employee in question was on sick leave at the time, Gillison decided to wait until the employee returned to work to discuss the matter. When the employee returned from sick leave, Gillison purportedly spoke with the employee, in the presence of a Union representative, to determine if the employee had been soliciting money from a member of the Respondent in connection with the gifting scheme.

Gillison testified that shortly after receiving the initial anonymous report, Frucci told her he had received a report from "someone" that several people were involved in a gifting scheme. She also contends that, on another occasion, an unidentified employee approached her with a list of names of people purportedly involved in the gifting scheme. Gillison further testified to having received an anonymous phone call from another of Respondent's members informing her of the gifting circle or scheme, and to receiving another anonymous letter questioning the Respondent's integrity for allowing employees to be involved in such a scheme. (Tr. 148-149).

Gillison claims that she made notes of the information she was receiving regarding the "gifting clrcle," as well as a list of individuals presumably involved in the scheme. Gillison then notified staff employees of the gifting circle via e-mail. In one such e-mail dated December 8, 2008, Gillison informed employees of the possible existence of a "gifting scheme" taking place on Respondent's premises, which she compared to an unlawful pyramid or "Ponzi" scheme. She cautioned employees that the "gifting scheme" could possibly be illegal, and that she would be reporting it to the local authorities, including the State Attorney General's office, for possible investigation. In another e-mail dated December 11, 2008, she provided employees with a copy of a "Consumer Alert" issued by the State Attorney General in October 2008 on the illegal nature of "gifting" and other similar schemes, and what individuals should do when asked to take part in any such scheme. (See, GCX-10; GCX-11).

On or around February 11, according to Gillison, Frucci instructed her to conduct an investigation into the gifting circle, provided her with a list of employees obtained from a report prepared for him by auditor Pioch which she was to interview, and directed her to prepare a report for him on her findings.[4] (Tr. 78). Gillison apparently conducted such an investigation by

[4] Union representative Cindy Jeffries testified, without contradiction, to being told by Gillison

Continued

interviewing the employees identified on Frucci's list, often with a Union representative present,[5] and thereafter prepared a report and turned it over to Frucci on or around February 20. Asked if she gave her report to anyone else, Gillison said she had not because she had been instructed by Frucci that he was the only one to receive the report. Gillison, however, admitted giving a copy of her report to LAFCU's attorneys, at their request, but only after Union's grievances were proceeding to arbitration. (Tr. 171).

Pioch purportedly first learned of the gifting circle in early December 2008, on receiving a copy of Gillison's e-mail and the attached Attorney General's consumer alert. He testified to being surprised on learning of the scheme, and did not really appreciate the ramifications involved in the scheme until after discussing it with others and researching it on the internet. Pioch claims that, at some point thereafter, he was called to Frucci's office where he and Frucci, with the Respondent's attorney, one Mr. Johnson, on the phone, expressed concerns about the gifting circle and its ramifications to LAFCU. All three, according to Pioch, apparently agreed that LAFCU might have to file some report on the gifting circle with regulatory agencies. Pioch explained that when he left the office, he was instructed to find out what was going on and to determine if LAFCU would be required to file some regulatory reports. Specifically, he was instructed to find out what was going on and the length and breadth of the gifting circle. Pioch understood from the nature of the discussion that he was to report whatever he learned directly and only to Frucci. He averred in this regard that "It was my understanding from the beginning that this was going to be my working with the CEO, that it was not going to go outside the two of us," and that he was not "to share this report with anyone other than the CEO." (Tr. 113, 114). Pioch made no mention in his testimony of anything else being said during this meeting on whether the report he was asked to prepare would be used for anything other than deciding whether LAFCU would need to file some report, including a "Suspicious Activity Report" or SAR with an appropriate regulatory agency.[6] (Tr. 114).

As LAFCU's auditor, Pioch's responsibilities include, among other things, preparing various reports for Respondent and outside regulatory agencies, including, when necessary, SARs. Pioch testified that he was authorized to prepare a SAR without having to obtain prior authorization or approval from Frucci or anyone else at LAFCU. The report Frucci asked him to prepare, however, was not a SAR, but rather a separate report to be used for, inter alia, determining if a SAR needed to be filed. Pioch testified that the employees he questioned about the "gifting circle" were not offered the opportunity to have a union representative present during the interviews because he "didn't see [his investigation] as an employee issue" and it was not a human resources matter.

On January 26, Pioch prepared and turned over this separate report to Frucci. Pioch gave some conflicting testimony on whether he also provided a copy of his report to LAFCU's

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that the employee names given to her by Frucci came from an earlier report Pioch prepared for Frucci following Pioch's own interviews with employees.

[5] Some employee interviews were conducted without Union representation because the employee involved did not request it.

[6] Banks and other lending institutions, like the Respondent here, are statutorily required to file a SAR "if it knows, suspects, or has reason to suspect that any crime or any suspicious transaction related to money laundering activity or a violation of the Bank Secrecy Act has occurred." See, 12 CFR 748.1. Said reports are deemed to be confidential. Thus, 12 CFR 748.5 provides that "any credit union, including its officials, employees, and agents, subpoenaed or otherwise requested to disclose a SAR or the information in a SAR must decline to produce the SAR or to provide any information that would disclose that a SAR was prepared or filed."

attorneys. Thus, despite claiming on Respondent's direct examination that he understood from the beginning that he would be working only with the CEO, that his report "was not going to go outside the two of us," and that he was not "to share this report with anyone other than the CEO," when asked on cross-examination by counsel for the General Counsel if Frucci was the only person to whom he submitted his report, Pioch replied, "and legal counsel," suggesting that he also gave a copy to LAFCU's attorney. (Tr. 125). Notably, on Pioch's direct examination, he was asked by Respondent's counsel if, as far as he knew, his report had made it into the hands of anyone other than the CEO. When Pioch replied that he was unaware of anyone else seeing his report, Respondent's counsel, in a highly leading fashion, proffered a different answer to Pioch by asking, "Except legal counsel?" at which point Pioch, picking up on his attorney's cue, replied, "Legal counsel, yes, of course." (Tr. 115).

Pioch's claim, in response to a query from counsel for the General Counsel, that he also gave a copy of his report to LAFCU's attorney, is not credible, for it is inconsistent with his other claim that his report was to be shared only with Frucci and no one else. Nor does his rather dubious response to his attorney's leading question serve to bolster his credibility, for the question put to him by Respondent's counsel was whether he knew if his report had found its way into the hands of LAFCU's attorney, not whether he, Pioch, had given a copy of his report to said attorney. Pioch's lack of credibility on this matter also leads me to question his further assertion of an attorney Johnson being a participant in the discussion he (Pioch) and Frucci had about the "gifting circle" matter. Pioch's admission, that the affidavit he gave to the Board during the investigation of the unfair labor practice charge makes no mention of him having had any such discussion with any attorney, further casts doubt on his claim regarding the involvement of an attorney Johnson in his "gifting circle" discussion with Frucci.

Lori Fahndrich is a LAFCU employee (member service representative) and the Union's chief steward at the facility. She first learned of the "gifting circle" sometime in December from another employee who gave her a copy of one of Gillison's e-mails as she, Fahndrich, was on her way to talk to Gillison on another matter. On meeting with Gillison, Fahndrich, being unfamiliar with "gifting circles," asked her about it and was told by Gillison that a "gifting circle" was nothing more than an unlawful pyramid or "Ponzi" scheme. Fahndrich then notified the Union's service representative, Cindy Jeffries, about the "gifting circle" issue and of the e-mails sent to employees by Gillison on the subject.

Jeffries, who is not an employee of the Respondent, recalls receiving the information about the "gifting circle" from Fahndrich, including copies of Gillison's e-mails, and having on-and-off discussions with Gillison on the matter, who informed her that there would be an investigation. Gillison also told her about an internal auditor's report being prepared by Pioch on the "gifting circle" matter, explaining that it would be part of an annual audit conducted by NCUA, a national association of credit unions, and designed to show that the "gifting circle" issue had been addressed. Pioch's report, Jeffries recalled Gillison saying, would be separate from the report she, Gillison, would prepare on the "gifting clrcle."

Sometime in mid-January, Fahndrich learned that Pioch was calling employees to his office and questioning them on what they knew about the "gifting circle." Not knowing what the status was of Gillison's investigation of the "gifting circle" matter, Fahndrich contacted Gillison to find out what the Pioch investigation was all about. Gillison told her Pioch was conducting an investigation in his capacity as internal auditor, that the information obtained by Pioch would not be used in the disciplinary process, and that employees had the right to talk or not talk to Pioch. (Tr. 73). At some point, presumably after this latter conversation with Gillison, Fahndrich was told by Gillison that she had been waiting for Pioch to complete his investigation and turn over his report to Frucci, and that, once he did so, Frucci, based on the information and employee

names provided to him in Pioch's report, gave her (Gillison) a list of names of employees to investigate.

As to Pioch's investigation, Fahndrich learned from Melinda Wood, one of the employees interviewed by Pioch, that Pioch asked her, and presumably other employees interviewed, to initial his handwritten notes of their conversations. Wood told Fahndrich she wanted a copy of the handwritten notes because of a concern that the notes could subsequently be altered or changed without her knowledge. Fahndrich testified she raised the matter of the signed handwritten notes with Pioch during a conversation they had while she was working the front desk. According to Fahndrich, Pioch approached her at the front desk and told her he would not be interviewing her about the "gifting circle" matter. Fahndrich then told Pioch that, while they were on the subject, she wanted him to provide employees who signed or initialed his interview notes with copies of those notes, explaining to him the concerns employees had that the notes could be altered without their knowledge. Fahndrich claims that Pioch replied, in a somewhat flippant manner, "How do you know I already haven't" changed the handwritten notes. (Tr. 77; GCX-12).

On January 20, Fahndrich sent Pioch an e-mail stating she was aware that Pioch was asking employees being interviewed to sign or initial his handwritten notes of their conversations, informed him that employees were concerned the notes could be altered without their knowledge, and requested that he provide said employees with copies of his handwritten notes. In a January 23, reply e-mail, Pioch thanked Fahndrich for her inquiry, explained that the interviews he was conducting were "for review of regulatory and compliance matters, and not a Human Resource function," and advised Fahndrich that, if she needed any further information, she should take the matter up with Frucci, to whom he reported directly. Fahndrich testified that, to her knowledge, no employee ever received a copy of the handwritten notes they signed for Pioch. She further testified that after Pioch completed his report, Gillison told her the "gifting circle" matter would not be turned over to the local authorities for investigation.

Jeffries sat in on some of the employee interviews conducted in February by Gillison, and testified that employees were represented "at every stage of [LAFCU's] investigation" into the "gifting circle" matter. (Tr. 42-43). She testified that Gillison completed her "gifting circle" investigation towards the end of February, after which Gillison told her she would be preparing a report for Frucci, and that the decision on who to discipline was to be made by Frucci**.** Gillison provided Jeffries with the names of several employees she believed might be terminated. The employees who were eventually terminated, Jeffries recalled, were slightly different from those identified by Gillison to her as possible terminations.

The record reflects that between March 11, and April 8, several employees were discharged or otherwise disciplined for their purported involvement in the "gifting circle." (See GCX-2).[7] Gillison was of the opinion that her report to Frucci was not a factor in the Respondent's decision to terminate employees, but did not explain what she based her opinion on (Tr. 153). Frucci, who made the termination and other disciplinary decisions regarding employees involved in the gifting circle, was not called to testify, leaving unexplained just how Frucci made his decisions, what information he may have relied on, or what role Gillison's or

[7] GCX-2 contains the discharge or disciplinary notices issued to employees. It shows employees Nuria Ankney, Tami Baty, Jan Atchley were discharged, and employee Nanette Lee was initially suspended and subsequently discharged. Employees Jan Lopez, Carolyn Rosa, and Hope Sheler received 10-day disciplinary layoffs, while employees Roxanne Dysart and Faith Rusk were issued disciplinary warnings.

Pioch's report may have played in his decisions.

Between March 13, and April 13, the Union filed grievances on behalf of said employees. (GCX-3), and, in furtherance thereof, submitted written requests to the Respondent for certain information relating to the discharge or disciplinary measure taken against each of the above-named employees.[8] For the most part, the information requested for each of the employees consisted of the following:

A) Any and all information used in issuing the discipline of the employee in question.
B) The personnel file for the above individual.
C) Internal auditor report on the "gifting circle."
D) All disciplines issued to union and non-union employees regarding "gifting circle."
E) Human Resources report to ALFCU CEO on "gifting circle."
F) List of all persons who came forward due to management's email.[9]

By letter dated March 19, Gillison responded as follows to Marutiak's information request regarding Ankney:

A. Cindy Jeffries has a copy of the communication between [Ankney] and me dated February 26…, and between [employee Rosa] and me dated March 11, 2009.
B. The personnel file will be provided.
C. The respective reports to the CEO are confidential and proprietary to LAFCU. They are work products subject to privilege in favor of Management as cited in P.P.G. Industries, Inc. and Aluminum Brick and Glass Workers International Union.[10]
D. The Union has copies of all disciplines issued to date to Union employees. We have no authority or authorization to release disciplinary action for a non-union employee….
E. The FMCS procedural rules as well as the current CBA are silent regarding any pre-hearing discovery and for economic reasons, among others, Management has never agreed to same during any contract negotiations.

By letters dated March 23, the Respondent replied to the Union's information requests involving employees Atchley and Baty. As to items A and B in the request, the Respondent advised the Union that copies of e-mails (item A) and the personnel files (item B) would be provided. Its response to items C, D, and E were identical to that provided in its above response to the information request involving Ankney. (GCX-5[b], 5[c]).

On April 16, the Respondent also replied to the Union's information requests regarding the other employees. Its response to items B through E mirrored those contained in its above March 19, letter to Marutiak. As to the information requested in item A, the Respondent

[8] The Union's information requests were submitted to Respondent either by Jeffries and/or Fahndrich. One information request, regarding the termination of employee Ankney, was made by Jeffries' supervisor, Joseph Marutiak. (See, GCX-4).

[9] The information requests for employees Ankney, Baty, and Atchley did not ask for the information sought in item F. The Union requested that the Respondent provide the information for these three employees by March 23. As to the other employees, the Union asked that the Respondent provide the requested information by April 17.

[10] The cases referenced by Gillison in her response to the information requests – *P.P.G Industries* and *Aluminum Brick and Glass Workers International Union* – appear to be arbitration decisions, as explained by the Respondent in its post-trial brief (RB: 8).

answered that "The Union was present and privy to all information during HR's investigation and interviews with the named employee," and that the information obtained in said interviews was used in issuing the discipline. In response to item F of the information requests, the Respondent agreed to provide the Union with "the list of persons who came forward after the e-mail to all Staff." (GCX-5[d], 5[f-i]). In response to the information request involving employee Lee, the Respondent agreed to provide the Union with a copy of the discipline issued to her and of her personnel file, but noted that Lee's termination was not for involvement in the "gifting circle." Regarding the information sought by the Union in items C, D, and E relating to Lee's termination, the Respondent responded in the same manner as it had with the other above-described requests.

The record shows that the Respondent did furnish the Union with the information sought in items A, B, D, and F of its several information requests, but declined to provide the Union with the internal auditor's report prepared by Pioch, and the Human Resources report prepared by Gillison, as requested in items C and E, respectively, of those requests. As Gillison explained in her letter to Marutiak, her report and Pioch's report were not turned over because both reports were "confidential and proprietary to LAFCU," and "work products subject to product privilege in favor of Management."

From an exchange of emails between Jeffries and Gillison on April 2, it appears the parties met the day before to discuss several of the grievances. In her email, Jeffries mentioned some information (but not the actual report) the Union had received "regarding the auditor's report" pointing out how the "gifting circle" scheme had posed "a moderate risk" of harm to LAFCU's reputation. (GCX-7). Jeffries, in her email, questions why the Respondent would have terminated employees who purportedly created this moderate risk to LAFCU by allegedly taking part in the "gifting circle" scheme, when it had, thus far, failed to terminate or impose the same severity of punishment on other persons who were found in prior audits or exams to have known but not corrected more serious problems involving high risks of fraud to LAFCU.

Jeffries sent Gillison another email a few minutes later thanking her for previously forwarding to the Union a copy of the CUNA Examination Overview, but again demanded that the Respondent provide the Union with a copy of the internal audit report prepared by Pioch on the gifting circle. She reminded Gillison that, on two prior occasions, the latter had assured her (Jeffries) and Fahndrich that the information gained in LAFCU's "internal audit process in preparation for the CUNA audit was not used in the employer's actions against employees in respect to the gifting circle." In her email, however, Jeffries expressed skepticism at this latter claim by Gillison, stating, "Obviously you did use the report or it would not have shown up on the overview which you have sent us as evidence to support the employer's actions against these employees." (GCX-8).

Gillison replied to Jeffries by email a few hours later explaining that the problem of the "gifting circle" had been included or referenced in the Examiners' Report prepared and submitted to NCUA examiners because, as a financial institution, LAFCU is "obligated to report any suspicious monetary activity…that could affect the safety and soundness of the institution and/or its members" by filing a SAR, which Gillison believed had occurred. She further explained to Jeffries that, to her knowledge, the NCUA examiners never saw the internal auditor's report prepared by Pioch, nor the report she prepared, regarding the gifting circle. (GCX-8). The record makes clear, and Gillison confirmed in a subsequent email to Jeffries, that Frucci was the one who made the decision to discharge or otherwise discipline employees involved in the alleged gifting circle scheme. (GCX-6).

Neither Pioch's nor Gillison's report on the gifting circle was ever provided to the Union,

nor, as readily admitted by Gillison, did the Respondent offer to negotiate or reach some kind of accommodation that would allow the Union access to the reports while protecting the Respondent's confidentiality concerns regarding said reports.

At the hearing, on direct examination, Gillison gave "a couple of reasons" for not providing her report to the Union. First, she explained that she declined to do so because "the report was a direct report" between [Frucci] and herself. Secondly, she stated that giving it to the Union "would have set a serious precedent relative to what the Union is entitled to," explaining, somewhat vaguely, that while she believed the Union should have whatever it is entitled to, her report "was not one of those things that I felt the Union was entitled to have." Asked by Respondent's counsel why she believed the Union was not entitled to her report, Gillison explained that her report was simply a summary of her investigation, and that the Union already had the information contained in the summary because its representative was present during her interview of employees, and thus heard everything she had heard during said interviews. However, when asked by me if this meant she refused to provide her report because the Union already had the information contained in the summary, Gillison backtracked somewhat by reasserting that her reason for not doing so was because the report was intended solely for Frucci. (Tr. 156-157).

Counsel for the General Counsel contends that the failure and refusal to furnish the Union with copies of said reports was unlawful and a violation of Section 8(a)(5) and (1) of the Act. The Respondent, on the other hand, principally argues that the reports were privileged and confidential and, thus, exempt from disclosure. I agree with Counsel for the General Counsel.

Discussion

1. Applicable principles

It is well-established that, as part of its bargaining obligation with a union duly authorized to represent its employees, an employer must, upon request, furnish the union with information that is relevant and necessary for it to perform its statutory duties and responsibilities as representative. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967); East *Tennessee Baptist Hospital v. NLRB*, 6 F.3d 1139, 1143 (6th Cir. 1993); *General Motors Corp. v. NLRB*, 700 F.2d 1083, 1088 (6th Cir. 1983); *Courtesy Bus Co.*, 354 NLRB No. 66 slip op at 2 (2009); *United States Postal Service*, 354 NLRB No. 58, slip op at 4 (2009); *Ralph's Grocery Co.*, 352 NLRB 128, 134 (2008); *National Broadcasting Company*, Inc., 352 NLRB 90, 97 (2008); *King Soopers, Inc.*, 344 NLRB 838, 840 (2005). Information sought by a union as to matters affecting the terms and conditions of employment of unit employees is deemed to be presumptively relevant and must be provided to the union on request. This duty to provide information extends to information needed by the union to process a grievance or to proceed to arbitration. *NLRB v. Acme Industrial*, supra.; *Ralph's Grocery*, supra.; *National Broadcasting Company, Inc.*, supra at 101; also, *National Grid USA Service Company*, 348 NLRB 1235, 1248 at fn. 17 (2006); *SBC California*, 344 NLRB 243, 245 (2005); *Jacksonville Area Association for Retarded Citizens*, 316 NLRB 338, 340 (1995); *Consolidation Coal Company*, 310 NLRB 109, 112 (1993); *Fawcett Printing Corporation*, 201 NLRB 963, 972 (1973).

A union's entitlement to information, however, is not absolute and is subject to some limitations. A union, for example, is not entitled to information regarding employees outside a bargaining unit it represents unless it can show that said nonunit information is both relevant and necessary for it to effectively carry out its statutory duties and obligations. *Bryant Stratton Business Institute,* 321 NLRB 1007, 1013 (1996). *Also, Monmouth Care Center*, 354 NLRB No. 2, slip Op. at 41 (2009). Likewise, an employer's claim of confidentiality may justify a refusal to

furnish otherwise relevant information to a union. *National Grid USA Service Company*, 348 NLRB, supra, at 1243-1244; *Crittenton Hospital*, 342 NLRB 686, 694 (2004); *Lasher Service Corp.*, 332 NLRB 834 (2000); *Jacksonville Area Association for Retarded Citizens*, supra.[11] Still, on this latter point, a bare assertion of confidentiality, without more, will not suffice to justify nondisclosure. Rather, when a claim of confidentiality is made, the party making the claim, in this case the Respondent, bears the burden of establishing that it has a substantial and legitimate confidentiality interest in the requested information. *Id*. If the Respondent meets this burden, its need for confidentiality must then be balanced against the union's legitimate interest in having the information disclosed. Finally, a claim of confidentiality in response to an information request must be timely raised. *National Broadcasting Company*, Inc., 352 NLRB 90, 101-102 (2008). The reason for imposing this timeliness requirement is so that the parties can attempt to seek an accommodation of the employer's asserted confidentiality concerns. *Id. Detroit Newspaper*, supra. Thus, when presented with an information request, an employer cannot simply raise its confidentiality concerns, but rather must come forward with some offer to accommodate both its concerns and its bargaining obligation. The burden of formulating a reasonable accommodation is on the employer; the union need not propose a precise alternative to providing the requested information unedited. *Burgess Medical Center*, 342 NLRB 1105, 1106 (2004). With these principles in mind, I now address the various arguments made by the Respondent to justify its decision not to provide the Union with the Gillison and Pioch reports.

2. The Gillison report

The Gillison report, as noted, was prepared by Gillison on instructions from Frucci, for the purpose of determining which employees were involved in the "gifting circle," and from which Frucci was to decide which employees would be discharged or otherwise disciplined for their involvement in the alleged scheme. As such, Gillison's report is nothing more than an investigative report used by management to discipline employees, similar to others she admits to preparing in the past.[12] (Tr. 154). The Board has long found such reports to be readily discoverable. See, *United States Postal Service*, 332 NLRB 635, 644 (2000); *The Grand Rapids Press*, 331 NLRB 296, 300 (2000); *United Technologies Corp.*, 277 NLRB 584 (1985).

The Respondent, on brief, contends that Gillison's report should be treated as

[11] Information generally considered confidential and not ordinarily subject to disclosure includes that "which would reveal highly personal information such as individual medical records of psychological test results; that which would reveal substantial proprietary information, such as trade secrets; that which could reasonably be expected to lead to harassment or retaliation, such as the identity of witnesses; and that which is traditionally privileged, such as memoranda prepared for pending lawsuits." See, *National Grid USA*, supra, quoting from *Pulaski Construction Co.*, 345 NLRB 931 (2005); Also, *Northern Indiana Public Service Co.*, 347 NLRB 210, 211 (2006); *Detroit Newspaper Agency*, 317 NLRB 1071, 1073 (1995).

[12] Gillison testified that she has, in the past, given to the Union documents prepared by her in connection with the discipline or discharge of employees, and that while she has previously prepared reports not unlike the one she prepared on the gifting circle for Frucci, she has never provided copies of such past reports to the Union because the Union has never before asked for them. Gillison did not explain how the report she prepared for Frucci on the gifting circle differed from the documents she admits providing to the Union in the past. Nor can it be determined from Gillison's testimony if any of the documents she may have provided to the Union in the past regarding the discharge or discipline of employees were, like the report on the gifting circle, prepared for Frucci at his request.

confidential because Gillison "believed the information to be private," and had been instructed by Frucci to prepare the "executive" report herself and to deliver it to him "for his eyes only." However, the mere fact that Gillison may have viewed her report as an internal document or, as described by the Respondent on brief, an "executive" report, to be shared only with Frucci does not per se make the document immune from disclosure. *United States. Postal Service*, 332 NLRB 635, 637 (2000). The information contained in the Gillison report was presumptively relevant to the Union as it pertained to the alleged involvement of unit employees in the gifting circle and was the basis for the discipline imposed on unit employees, information the Union clearly needed to properly process its grievances to arbitration. This fact was made known to the Respondent in the information requests submitted by the Union. To overcome this presumption, the Respondent must do more than simply rely on Gillison's stated belief in the confidentiality of her report.

In an effort to do so, the Respondent, on brief, further argues that the Gillison report is confidential because it "contained Gillison's personal thoughts and impressions regarding her investigation, various confidential recommendations in anticipation of litigation/arbitration, and discussions of matters involving attorney/client privilege, and 'work product privilege.'" (RB:8). The argument lacks merit. Thus, there is no evidence to support the Respondent's assertion that Gillison's report contains "various recommendations in anticipation of litigation/arbitration, and discussions of matters involving attorney/client privilege, and "work product privilege." Gillison made no such claim in her testimony. Gillison testified only that her report contained "a summary memorandum of my thoughts and impressions," but made no mention of having included in her report any recommendation to Frucci regarding litigation or arbitration matters, or discussing attorney/client or work product privilege in the report. Respondent's assertion, on brief, therefore, that the Gillison report contains such matters, finds no support in the record.[13]

Nor do I find Gillison's report exempt from disclosure because it arguably contains Gillison's thoughts and impressions regarding the "gifting circle" investigation, for said information does not fall within any of the categories of information which the Board has found to be sufficiently sensitive to warrant protection from disclosure on confidentiality grounds (see fn. 11, supra). But even if Gillison's personal thoughts and impressions regarding her investigation of the "gifting circle" were deemed sensitive enough to support the Respondent's confidentiality claim, its noncompliance with the Union's request for a copy of the Gillison report would not be justified, for, as noted, an employer raising such a defense cannot simply ignore the Union's request but rather must offer to accommodate the Union's need for the information with its own confidentiality concerns. The Respondent, for example, could have offered to provide the Union with a sanitized or redacted version of the report containing only the factual information uncovered by Gillison during the investigation with Gillison's thoughts and impressions blacked out. Gillison, as stated, readily admitted that no such offer to accommodate was made to the Union. (Tr. 170). Consequently, I find that the Respondent has not demonstrated that it had a sufficient legitimate and substantial confidentiality interest in the Gillison report as to have justified its nondisclosure to the Union, and that, even if it had, it nevertheless failed to bargain, as it was required to do, with the Union over a possible

[13] This is not to suggest that Gillison's report does not include such matters. Rather, my finding here is that no evidence to support that assertion was produced at trial. The Respondent's argument might have carried some weight had it presented the report to me for an in-camera review to assess the accuracy of its assertion. As no such request for an in-camera review was made, and as Gillison made no such claim in her testimony, the Respondent's claim that the Gillison report contains matters involving attorney-client, and work product, privilege is unsubstantiated and rejected as without merit.

accommodation regarding the report.

The Respondent, on brief, also suggests, implicitly, that it should not be required to turn over the Gillison report to the Union because its initial refusal to comply with the latter's request had not prejudiced the Union in any way. In support of its position, the Respondent argues that, since union representatives attended the employee interviews conducted by Gillison and were free to question employees themselves after the interviews to ascertain what may have been discussed, the Union thus had access to the same information found in Gillison's report.[14] I find no merit in it argument.

First, the record evidence, more specifically Gillison's own testimony, makes clear that a union representative was not present at all employee interviews conducted by Gillison (Tr. 167). Consequently, whatever information the Union may have gotten from the union representatives who attended the Gillison employee interviews would have been incomplete and a poor substitute for the actual and complete investigative report Gillison prepared for Frucci containing all information garnered from the interviews. The Respondent's suggestion, therefore, that the Union was not prejudiced by LAFCU's failure to provide it with Gillison's report is pure speculation. Indeed, it is just as easy to speculate that the Union was prejudiced when filing its grievances by having to rely only the limited information received from some of the employee interviews its representatives may have attended, rather than on Gillison's full investigative report which presumably contained all information obtained by Gillison from all interviews conducted by her. In any event, the Respondent's obligation to comply with the Union's demand for the Gillison report is not determined by whether its noncompliance may or may not be prejudicial to the Union, but rather on whether the report was relevant and necessary to the Union in carrying out its statutory obligations, a fact already established here.

Further, even if, as the Respondent claims, the Union could have obtained the information found in Gillison's report by talking to employees who were interviewed by Gillison, and from the representatives who attended some of the interviews, the Respondent's failure to comply with the Union's request for that report would not be justified. Thus, the Board has held that, absent special circumstances not present or alleged here, an employer may not refuse to furnish relevant information on the grounds that the union has an alternative source or method of obtaining the information. *Monmouth Care Center*, 354 NLRB No. 2, slip op. at 47 (2009); *King Soopers, Inc.*, 344 NLRB 842, 844 (2005); *Yeshiva University*, 315 NLRB1245, 1250 (1994); *Ilinois-American Water Co.*, 296 NLRB 715, 724 (1989); *Asarco, Inc.*, 276 NLRB 1367, 1368 (1985). The Respondent, therefore, was not at liberty to withhold the Gillison report from the Union based on a belief that some of the information contained in the report may have found its way to the Union via the representatives who attended the employee interviews.

On brief, as it did at the hearing, the Respondent asserts that Gillison's report is no longer relevant to the Union, and consequently need not be provided, because the stated purpose for which it was initially sought by the Union, e.g., to its process grievances, has already been accomplished, since the Union was able to process its grievances with the other

[14] The Respondent, on brief, appears to be using this same argument to also justify its nondisclosure of the Pioch report. Thus, it asserts that "there [was] no prejudice to the Union in not having the confidential reports" (plural), presumably because of the presence of a union representative during the interviews. While the record shows that Pioch interviewed employees and took notes, there is no evidence that union representatives sat in on any of the employee interviews conducted by Pioch. The Respondent's argument in this regard, therefore, clearly has no application to the Pioch report.

information provided to it by LAFCU, which grievances are currently awaiting arbitration. Its argument is without merit for, as previously discussed, an employer's duty to furnish information relevant to the processing of a grievance does not terminate when the grievance is taken to arbitration. *National Grid USA*, supra at 1247, fn. 17; also, *Fleming Companies, Inc.*, 332 NLRB 1086, 1094 (2000) ("Employer must furnish information that is necessary to properly prepare for arbitration as long as the information is relevant to the grievance scheduled for arbitration"). As discussed and found above, the Gillison report clearly was relevant to the grievances filed by the Union as the information contained therein was apparently relied on by Frucci in determining which employees were to be disciplined or discharged for their purported involvement in the alleged "gifting circle" scheme. Gillison's report, therefore, was needed by the Union to help it ascertain the facts which led to the disciplinary action taken, and to help it decide whether it should proceed to arbitration or seek some accommodation, or possible settlement, with Respondent over these matters.

I also find no merit in the Respondent's further assertion that the Gillison report is protected from disclosure under the attorney work-product doctrine and the attorney-client privilege. The work-product doctrine is distinct from the attorney-client privilege in that the latter protects only confidential communications, while the work product doctrine generally protects from disclosure documents prepared by or for an attorney in anticipation of litigation. In either case, the party asserting the privilege bears the burden of showing that the information sought enjoys immunity from disclosure.

Here, as discussed above, Gillison's report was prepared solely by Gillison, a non-attorney, on instructions from her superior, CEO Frucci. Gillison never claimed, and there is no evidence to show, that she received assistance or advice from any LAFCU attorney in preparing her report. Nor is there any support for the Respondent's claim, on brief (RB:11), that Gillison's report "includes attorney/client discussions", for Gillison never testified as such. Rather, Gillison's testimony, as noted, is that she prepared the report after interviewing employees from a list provided to her by Frucci, that she did so only on Frucci instructions, and that she turned over her finished report to Frucci alone, but did later provide a copy of her report to a LAFCU attorney for use in the upcoming arbitrations. Gillison never claimed to have had any discussions regarding her investigation with any LAFCU attorney or that her report included any such discussions. Likewise, there is no evidence that Frucci was acting on instructions or advice from LAFCU's attorneys when he directed Gillison to investigate and prepare her report on the "gifting circle." Frucci, who might have been able to bolster the Respondent's attorney-client, attorney-work product claim, was not called to testify, warranting an adverse inference that had he been called, his testimony would not have supported the Respondent's claim.[15] I find that Gillison's report is not exempt from disclosure under either the attorney work-product

[15] When a party fails to call a witness who may reasonably be assumed to be favorably disposed to the party, an adverse inference may be drawn regarding any factual question on which the witness is likely to have knowledge. In particular, it may be inferred that the witness, if called, would have testified adversely to the party on that issue. *Desert Pines Club*, 334 NLRB 265, 268 (2005). Here, it was Frucci who ordered both Gillison and Pioch to conduct an inquiry into the "gifting circle" scheme, who directed them to prepare separate reports for him, who made the ultimate decision on who to discharge or otherwise discipline employees for their alleged involvement in the "gifting circle," who, presumably, would have made any decision to consult with legal counsel on the matter, and who, therefore, was in the best position to provide key and relevant testimony regarding the Respondent's attorney-client privilege and attorney work-product defenses. Accordingly, the Respondent's failure to call Frucci as a witness warrants an adverse inference.

doctrine or the attorney-client privilege.[16]

Nor do I agree with the Respondent's additional claim that Gillison's report is exempt from disclosure because it contains witness statements, for Gillison readily admitted that her report was simply a summary of her meetings with employees reflecting her own thoughts and impressions, and does not contain any witness statements. (Tr. 169). The Board has generally found such summaries to be discoverable. See, *United States Postal Service*, 332 NLRB 635, 637 (2000); *Pennsylvania Power Co.*, 301 NLRB 1104, 1107 (1991); *New Jersey Bell Telephone Co.*, 300 NLRB 42 (1990). The Union, it should be noted, never sought to obtain copies of any actual statements employees may have provided to Gillison during the interviews; rather, the Union requested only the summary report Gillison prepared for Frucci following those interviews. Accordingly, the Respondent's reliance on a "witness statement" defense to justify its refusal to provide the Union with the Gillison report is rejected as without merit.

In sum, I find that the Respondent was not justified in refusing to comply with the Union's request for a copy of the Gillison report, and that its refusal to provide the Union with said report was, as alleged in the complaint, unlawful and a violation of Section 8(a)(5) and (1) of the Act.

3. The Pioch report

The record reflects that the Pioch report, like the Gillison report, played a role in the Respondent's decision to terminate or discipline employees for their alleged involvement in the "gifting circle." Thus, information contained in Pioch's report was provided to Gillison for use in her own investigation into the "gifting circle,"[17] from which Gillison prepared her own report for Frucci which, I reasonably infer, the latter used, together with the Pioch report, to decide which employees to terminate or discipline for their purported involvement in the alleged scheme. That Pioch may have believed his report was not intended to serve a human resources function, or, for that matter, that Gillison may have believed her report played no role in the employees' terminations or discipline, is of no real consequence, for a clear nexus has been shown here between his report, the Gillison report, and the resulting discharge and/or discipline of employees by Frucci. There is no evidence here to suggest, nor does the Respondent contend, that Frucci conducted his own investigation into the "gifting circle," or that his decision on who to terminate or otherwise discipline was based on anything other than the Pioch and Gillison reports. Frucci's failure to testify leads me to reasonably conclude that had he been called to testify, he would not have contradicted my finding here that he based his decisions to terminate or discipline employees on both the Pioch and Gillison reports. Accordingly, I find that the Pioch report, like the Gillison report, was presumptively relevant to, and needed by, the Union to process it grievances and for the upcoming arbitrations.

The Respondent's principal argument for not turning over the Pioch report to the Union is that it is prohibited from doing so by regulation (12 CFR 748.1) and statute (31 U.S.C.

[16] I further agree with the General Counsel's assertion on brief that the Respondent's attorney-client privilege defense was not timely raised and should be rejected for this reason also. As noted, in its March and April responses to the Union's information requests, the Respondent did not assert attorney-client privilege as a reason for refusing to turn over the Gillison or Pioch reports to the Union. This particular defense was raised for the first time by the Respondent more than three months later in its July 30, answer to the complaint.

[17] Although Gillison denied knowing that Pioch prepared a report for Frucci or seeing any such report, she did not deny having received from Frucci information contained in the Pioch report. (Tr. 152).

5318(g)(2). (RB:7). The regulation and statute cited by the Respondent do indeed generally prohibit lending institutions, such as LAFCU, from disclosing the existence or non-existence of a SAR, or any information that may be contained in such report. However, the record makes clear that the Union, in its information request, was seeking only the report prepared by Pioch for Frucci on the "gifting circle," and not any SAR that may or may not have been prepared or filed by Pioch. (Tr. 133). While admitting that the Union was seeking only the Pioch report and not a copy of any SAR Pioch may have prepared, the Respondent nevertheless contends that the above regulation and statute also prohibit the disclosure of any information which may reveal whether a SAR has been prepared or filed, which, it further contends, the Pioch report will do. I find its argument in this regard unconvincing.

The only evidence in the record purporting to support the Respondent's above assertion is a rather vague claim by Pioch in his testimony that the information contained in his report to Frucci is the same as that included in some other report he filed. It is not, however, clear if this other report alluded to by Pioch was a SAR or some other document, for in questioning Pioch, Respondent's counsel simply made vague references to "reports" Pioch had prepared in addition to the report the latter prepared for Frucci. (Tr. 116). Pioch never explained if the other report he prepared, containing the same information he provided in his report to Frucci, was a SAR, or some other report. Nevertheless, given the position taken by Respondent's counsel at the hearing, that the Respondent was statutorily prohibited from disclosing the existence or nonexistence of a SAR, it seems unlikely that the "other" report Pioch was referencing as containing the same information he provided in his report to Frucci could have been a SAR. If, however, this "other" report referenced by Pioch is a SAR, then Pioch and Respondent's counsel would have violated the very regulation the Respondent claims to be relying on to justify not disclosing the Pioch report.[18]

Other than Pioch's rather vague above testimony, there is simply no evidence to indicate what his report to Frucci may or may not have contained that would render it prohibited from disclosure by the above regulation or statute. For example, no description or summary of its contents was provided at the hearing or, for that matter, proffered to me by the Respondent for an in-camera review to assess the reliability of Pioch's assertion. The only thing known about the report is that it was prepared by Pioch, on instructions from Frucci, that it contains information obtained by Pioch from employees he interviewed about the "gifting circle," and that it presumably identifies which employees were interviewed by Pioch since, according to Jeffries' undisputed account, Gillison got her list of employees to be interviewed from information provided in the Pioch report. Pioch's claim as to the similarity in content between his report to Frucci, and some other unknown, unspecified report he may have prepared, struck me as nothing more than a transparent attempt by him to cloak his report with the same veil of confidentiality accorded to SARs by regulation or statute.

[18] When I sought clarification from the parties as to the distinction between Pioch's report, which is what the Union sought, and a SAR, which the Respondent's counsel adamantly declined to discuss at any length citing the enabling statute, the Respondent's counsel replied, "Mr. Pioch did testify earlier that the information in both is the same." (Tr. 133). Thus, while Pioch never actually identified this other "report" as a SAR, the Respondent's counsel may unwittingly have done so in his above response to my query. In any event, notwithstanding the Respondent's insistence that it was prohibited from disclosing whether or not Pioch had prepared a SAR, it appears that Gillison did not feel constrained to do so, for she, as noted, expressed her belief to Jeffries and Fahndrich during an exchange of emails that a SAR had indeed been filed by Pioch. (GCX-8).

Assuming, arguendo, that the "other" report referenced by Pioch was a SAR, I am nevertheless unwilling, given Pioch's lack of credibility in other matters, to accept at face value, and without some corroboration, his representation that the information included in his report to Frucci is the same as that contained in the SAR. Other than this dubious claim by Pioch, the Respondent produced no evidence to support its assertion that disclosure of the Pioch report to the Union would somehow reveal whether or not Pioch also prepared and filed a SAR.

As stated, the Union here is seeking only the Pioch report to which, as found above, it is presumptively entitled, not any SAR that Pioch may or may not have prepared. The regulation relied on by the Respondent only prohibits disclosure of the existence or contents of a SAR and information contained therein, and does not prohibit disclosure of other extraneous reports unrelated to a SAR. See, e.g., *Weil v. Long Island Savings Bank*, 195 F. Supp. 2d 383, 389 (2001); *United.States v. Holihan*, 248 F.Supp. 2d 179, 187 (2003); also, 124 *Banking Law Journal* 798 (October 2007). Here, as found above, there is no credible evidence to show that Pioch's report contains information that identifies the existence or nonexistence of a SAR. The Pioch report itself is not a SAR, nor has it been alleged to have been a draft of one which might prevent its disclosure. Accordingly, I find no statutory or regulatory impediment to its disclosure to the Union.

As it did with the Gillison report, the Respondent also contends that the Pioch report cannot be disclosed to the Union because it includes confidential witness statements. Again, there is simply no evidence to support this assertion. Pioch, who prepared the report, made no such claim in his testimony. The record does reflects that employees interviewed by Pioch were asked to initial Pioch's notes of their discussions. There is, however, no evidence to indicate if employees were ever given an opportunity to thoroughly read what Pioch wrote down, if they ever adopted Pioch's notes of their conversation as their own or as accurately reflecting what was discussed, or if they received any assurances of confidentiality from Pioch regarding statements they may have made to him. On these facts, whatever statements employees may have given to Pioch during his interviews would not qualify as confidential witness statements exempt from disclosure. *New Jersey Bell Telephone*, supra at 43. In any event, as stated, there is no evidence that any such employee statements were incorporated by Pioch into the report he prepared and delivered to Frucci, and, even assuming, arguendo, that they had been so incorporated, said statements would not, as noted, qualify as "witness statements." The Union, it should be noted, is not seeking access to any such employee statements, and is only asking for a copy of the Pioch report. Notably, the Respondent, as it is required to do when raising a confidentiality defense, never offered to accommodate its confidentiality concerns with the Union's stated need for, and entitlement to, the information contained in the Pioch report. Accordingly, the Respondent's refusal to provide the Union with a copy of the Pioch report because it purportedly contains "witness statements" is rejected as without merit.

The Respondent also claims that the Pioch report is protected from disclosure by the attorney-client privilege and work-product doctrine. I disagree. Pioch, a non-attorney, prepared his report at Frucci's behest and for Frucci's eyes only. Although Pioch claims that attorney Johnson was involved in his pre-report discussion with Frucci, his claim in this regard, as previously discussed, is not reliable. Pioch, in any event, never claimed to have received instructions, directions, or any assistance from Johnson or any other LAFCU attorney in preparing his report. Accordingly, I find neither the attorney-client privilege nor the attorney work-product doctrine to be applicable or controlling here.

Finally, for the reasons discussed above in connection with the Gillison report, the Respondent's claim that the Union no longer needs the Pioch report because it was able to process its grievances without it, is rejected as without merit. Accordingly, I find that the

Respondent's refusal to provide the Union with a copy of the Pioch report was unlawful and a violation of Section 8(a)(5) and (1) of the Act.

Conclusions of Law

1. The Respondent, Lansing Automakers Federal Credit Union, is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. Local 459, Office Professional Employees International Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act, and is the exclusive collective bargaining representative of the Respondent's employees in the following appropriate bargaining unit:

> All full-time and regular part-time office clerical employees in the following classifications: Financial Services Representative I (including tellers, file clerks, loan clerks, and adjustment clerks); Financial Services Representative II (including member services representatives, receptionists, and loan interviewers); Financial Services Specialist (including bookkeepers, senior member services representatives, loan officers, head tellers, collectors and Loss Prevention Specialists, employed by Respondent at its various facilities; but excluding maintenance employees, non-probationary temporary employees, professional employees, Human Resources administrative personnel, confidential secretaries, and guards and supervisors as defined in the Act.

3. By failing and refusing to comply with the Union's request for copies of reports prepared by Respondent's Human Resources Director Gillison and Internal Auditor Pioch for its Chief Executive Officer Frucci regarding a "gifting circle," which information is necessary for and relevant to, the Union's performance of its statutory duties as exclusive collective bargaining representative of Respondent's unit employees, the Respondent has violated Section 8(a)(5) and (1) of the Act.

4. The above-described unfair labor practice affects commerce within the meaning of Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent, on request, shall be required to provide the Union, if has not already done so, with copies of the reports prepared by LAFCU's Human Resources Director and its Internal Auditor for its Chief Executive Officer regarding a "gifting circle," and to post an appropriate notice to employees.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[19]

[19] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed

Continued

ORDER

The Respondent, Lansing Automakers Federal Credit Union, Lansing, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with Local 459, Office and Professional Employees International Union (OPEIU), AFL-CIO, which is the exclusive collective-bargaining representative of LAFCU's employees in an appropriate unit, by refusing the Union's request for copies of reports prepared for LAFCU's Chief Executive Officer by LAFCU's Internal Auditor and Human Resources Director, which information is necessary for, and relevant to, the Union's performance of its statutory duties and responsibilities as exclusive bargaining representative. The appropriate bargaining unit includes:

> All full-time and regular part-time office clerical employees in the following classifications: Financial Services Representative I (including tellers, file clerks, loan clerks, and adjustment clerks); Financial Services Representative II (including member services representatives, receptionists, and loan interviewers); Financial Services Specialist (including bookkeepers, senior member services representatives, loan officers, head tellers, collectors and Loss Prevention Specialists, employed by Respondent at its various facilities; but excluding maintenance employees, non-probationary temporary employees, professional employees, Human Resources administrative personnel, confidential secretaries, and guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Provide the Union, if it has not already done so, with copies of the reports prepared by LAFCU's Internal Auditor and its Human Resources Director and submitted to LAFCU's Chief Executive Office pertaining to their investigation and/or inquiry into a "gifting circle."

(b) Within 14 days after service by the Region, post at its facility in Lansing, Michigan, copies of the attached notice marked "Appendix."[20] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice

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waived for all purposes.

[20] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

to all current employees and former employees employed by the Respondent at any time since March 19, 2009.

Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., January 5, 2010.

_____
George Alemán
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT fail and refuse to bargain collectively with Local 459, Office and Professional Employees International Union (OPEIU), AFL-CIO, which is the exclusive collective-bargaining representative of our employees in an appropriate unit, by refusing its request for copies of reports prepared by LAFCU's Internal Auditor and Human Resources Director for LAFCU's Chief Executive Officer regarding a "gifting circle," which information is necessary for, and relevant to, the Union's performance of its statutory duties and responsibilities as exclusive bargaining representative of our employees. The appropriate unit includes:

All full-time and regular part-time office clerical employees in the following classifications: Financial Services Representative I (including tellers, file clerks, loan clerks, and adjustment clerks); Financial Services Representative II (including member services representatives, receptionists, and loan interviewers); Financial Services Specialist (including bookkeepers, senior member services representatives, loan officers, head tellers, collectors and Loss Prevention Specialists, employed by Respondent at its various facilities; but excluding maintenance employees, non-probationary temporary employees, professional employees, Human Resources administrative personnel, confidential secretaries, and guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, to the extent we have not yet done so, provide the Union with relevant and necessary information it has requested, including copies of the reports prepared by our Human Resources Director and our Internal Auditor for our Chief Executive Officer regarding a "gifting circle."

LANSING AUTOMAKERS FEDERAL CREDIT UNION

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

477 Michigan Avenue, Federal Building, Room 300

Detroit, Michigan 48226-2569

Hours: 8:15 a.m. to 4:45 p.m.

313-226-3200.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 313-226-3244.